

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matters of	)	
	)	
IP-Enabled Services	)	WC Docket No. 04-36
	)	
E911 Requirements for IP-Enabled	)	WC Docket No. 05-196
Service Providers	)	

**COMMENTS OF TIME WARNER INC.**

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**COMMENTS OF TIME WARNER INC.**

Time Warner Inc. (“Time Warner”) submits these comments in response to the recent Notice of Proposed Rulemaking (“NPRM”)<sup>1</sup> regarding the provision of E911 service by voice over Internet Protocol (“VoIP”) providers. Because of the breadth of capabilities offered by Time Warner Cable Inc. (“Time Warner Cable”) and America Online, Inc. (“AOL”) (whose offerings include fixed and nomadic services, and facilities-based and non-facilities-based services), Time Warner is ideally situated to comment in this phase of the proceeding as the Commission seeks to facilitate the development of more advanced E911 solutions.

**INTRODUCTION AND SUMMARY**

The VoIP services offered by Time Warner Cable and AOL are key components of Time Warner’s ability to meet consumers’ communications needs. Time Warner accordingly has a vital interest in the Commission’s regulation of VoIP services, including the adoption of rules regarding E911. Time Warner applauds the

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<sup>1</sup> *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, WC Docket Nos. 04-36 and 05-196, FCC 05-116 (rel. June 3, 2005) (“*VoIP E911 Order*” or “*NPRM*”).

Commission's commitment to public safety — a commitment we wholeheartedly share — and fully supports the decision to require providers of interconnected VoIP services to offer E911 capabilities. As Time Warner has stated throughout this proceeding, consumers rightfully expect that voice services that employ NANP numbers and allow subscribers to receive calls from and terminate calls to the PSTN, *i.e.*, voice services that resemble traditional telephone services, will include access to emergency services.<sup>2</sup>

The Commission should give its new rules a chance to succeed, however, before adopting any further regulatory requirements regarding E911 deployment by VoIP service providers. While it is commendable for the Commission to seek comment on whether it should play an even more active role in facilitating next-generation E911 solutions that provide automatic location identification, the Commission should remain mindful of the limitations still faced by *nomadic* and *mobile* VoIP services, in contrast to *fixed* VoIP services, which can provide effective E911 access using customers' fixed locations. The Commission therefore should avoid painting with too broad a brush in adopting any new requirements targeted at nomadic and mobile VoIP services. Moreover, the Commission should continue to refrain from regulating VoIP services that do not resemble traditional telephone services and thus do not engender reasonable expectations of E911 access. The Commission also should defer to the ongoing industry processes aimed at developing new solutions for automatic location identification, rather than prematurely adopting technical mandates.

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<sup>2</sup> Comments of Time Warner Inc. at 8, 13, *IP-Enabled Services*, WC Docket No. 04-36 (filed May 28, 2004) ("*Time Warner Comments*").

Similarly, the Commission should give providers of VoIP services with nomadic functionality a reasonable opportunity to develop procedures and systems capable of immediately updating customers' registered locations. Imposing performance mandates at this early stage would be premature and counterproductive. Moreover, because the Commission's rules regarding customer notifications and acknowledgements are fully sufficient to safeguard consumers' interests, the Commission should refrain from imposing additional mandates in this area. Nor are further reporting requirements necessary to ensure compliance with the Commission's new rules. The Commission likewise should defer taking any action with respect to customer privacy.

## **BACKGROUND**

Time Warner is a global entertainment, multimedia, and communications company. In addition to its filmed entertainment, publishing, and television interests, Time Warner, through its subsidiaries Time Warner Cable and AOL, also offers an expanding array of advanced IP-enabled services, including VoIP services.

Time Warner Cable, the nation's second largest cable operator, owns or manages cable systems serving nearly 11 million subscribers in 27 states. In addition to its basic and digital cable services, Time Warner Cable offers high-speed data and home-networking services that provide consumers with broadband Internet access at market-leading speeds. Recently, Time Warner Cable has capitalized on its robust broadband network by aggressively pursuing the deployment of a VoIP service called Digital Phone. Digital Phone enables Time Warner Cable systems to offer consumers a high-quality,

reliable, facilities-based telephone service that competes effectively with incumbent LECs' services.

First introduced in 2003, Digital Phone has now been launched in all Time Warner Cable divisions and is available to more than two-thirds of Time Warner Cable's homes passed.<sup>3</sup> The service has been a hit with consumers: As of June 30, 2005, Time Warner Cable had approximately 614,000 Digital Phone subscribers. Consumers reap the rewards from the roll-out of Digital Phone in the form of lower prices, better quality, and more innovative features.<sup>4</sup>

From its initial roll-out, Digital Phone has included E911 capabilities. Recognizing the critical importance of public safety, Time Warner Cable worked with its CLEC partners to ensure that 911 calls would be routed directly to PSAPs over dedicated trunks with Automatic Numbering Information ("ANI") and Automatic Location Information ("ALI"). Time Warner Cable does not begin providing Digital Phone service to subscribers in a given area unless and until the E911 service is tested and certified by the local PSAP.

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<sup>3</sup> Time Warner Cable is committed to the rapid deployment of Digital Phone service throughout all its systems as fast as market, regulatory, and technical factors allow. Time Warner Cable is addressing entry obstacles aggressively and expects to make Digital Phone service available to all its subscribers by the end of 2006.

<sup>4</sup> Time Warner Cable Digital Phone provides unlimited local, in-state, and long distance calling to the U.S. and Canada, as well as call waiting, caller ID, and additional features for a flat monthly fee. Subscribers can make and receive calls using virtually any commercially available handset, and they have access to toll-free calling, international calling, directory assistance, operator services, and telecommunications relay services. Customers switching to Digital Phone can keep their existing landline telephone numbers and retain or change their current directory listings. Moreover, Digital Phone enables Time Warner Cable to offer customers added value, convenience, and other benefits associated with its combined package of video, high-speed data, and voice services.

Unlike IP-based voice services that use the public Internet, Digital Phone is not intended to be a nomadic service. This is not simply a matter of Time Warner Cable's terms of service, which prohibit customers from moving the eMTA.<sup>5</sup> It is also due to the nature of the Digital Phone service, which is designed not to be used in connection with the Internet, but rather to work over Time Warner Cable's cable-television facilities. Indeed, in virtually all cases, Time Warner Cable's eMTAs simply will not function if moved.<sup>6</sup>

Since testing the service in 2002 and launching it commercially in 2003, Time Warner Cable has clearly disclosed to customers how Digital Phone differs from voice services offered by traditional wireline providers<sup>7</sup> — including the fact that the service (including E911 capabilities) will not operate in the event of a loss of electrical power.<sup>8</sup>

More recently, AOL's subsidiary, AOL Enhanced Services, L.L.C., introduced a competitive VoIP service, giving its members a new choice for their voice, e-mail, and

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<sup>5</sup> An "eMTA" (embedded multimedia terminal adapter) is a voice-enabled cable modem that contains an RJ-11 outlet. Like traditional cable modems, eMTAs are powered by electricity drawn from a standard power outlet at the customer's premises. Time Warner's eMTAs contain a battery back-up that is good for at least four hours of service.

<sup>6</sup> The only exception is that an eMTA may work in the limited circumstance where a customer moves it to the premises of another Time Warner Cable customer served off the same node. Such a move, however, would violate the Subscriber agreement.

<sup>7</sup> See Letter of Julie Y. Patterson, Vice President and Chief Counsel, Telephony, Time Warner Cable, to Marlene Dortch, Secretary, FCC, WC Docket No. 05-196 (Aug. 10, 2005).

<sup>8</sup> Because it uses the existing wireline 911 infrastructure, Time Warner Cable's E911 service is virtually identical to that provided by incumbent LECs. Unlike the twisted copper wire used by ILECs, however, the fiber and coaxial wire used in Time Warner Cable's systems does not carry power. Thus, a commercial power failure can cause eMTAs to stop functioning. In addition, power outages may affect some of the equipment between the subscriber and the head-end, but that is true with respect to ILEC networks as well.

instant messaging communications needs. AOL's Internet Phone Service, to be branded as TotalTalk™, uses existing high-speed Internet connections to offer consumers unlimited local and long distance voice services. AOL's April 2005 launch of the service included 40 metropolitan areas across the United States, and AOL anticipates that, by the end of this year, more than 70 percent of U.S. households will be able to subscribe to this exciting new offering.<sup>9</sup>

While AOL's Internet Phone Service has nomadic capabilities and thus presents greater challenges for implementing E911, AOL is strongly committed to ensuring that its subscribers have access to vital emergency services. AOL accordingly has incorporated E911 (or 911, if the local PSAP does not support E911) in all of its retail VoIP plans and has taken steps to enable such capabilities by default. AOL also has collaborated with the National Emergency Number Association ("NENA") to educate consumers about emergency services and to work toward more robust capabilities. AOL has worked diligently to develop extensive processes to notify new and existing customers of the limitations of current E911 solutions.<sup>10</sup>

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<sup>9</sup> As with Time Warner Cable's Digital Phone, AOL's Internet Phone Service offers any-distance calling packages (AOL also offers metered in-state and long distance calling plans); call waiting, caller ID, and related features; toll-free calling; international calling, directory assistance; operator services; and telecommunications relay services. Subscribers also can port existing telephone numbers and retain directory listings.

<sup>10</sup> See Letter of Tekedra McGee Jefferson, Assistant General Counsel, America Online, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 05-196 (Aug. 10, 2005).



## DISCUSSION

### I. New or Additional E911 Obligations As Applied Fixed Or Nomadic VoIP Services Are Not Necessary To Achieve The Commission's Goals.

Time Warner applauds the Commission's efforts to address the unique challenges faced by *nomadic* VoIP services in providing advanced E911 solutions, but as discussed below, believe that no additional requirements for these services are warranted at this time. Moreover, it would be unnecessary and unduly burdensome to require providers of *fixed* VoIP services — such as Time Warner Cable's Digital Phone — to comply with mandates intended to address challenges uniquely associated with *nomadic* or *mobile* VoIP services. As noted above, not only are Digital Phone subscribers contractually prohibited from moving their modem to a location other than their Registered Location, but in virtually all cases Digital Phone service will not work if a subscriber moves the modem to a new location. The Commission's existing mandate is sufficient to ensure that these consumers will have access to emergency services. Overlaying an additional set of technical requirements would entail no public interest benefits in the case of fixed services that already transmit ANI and ALI to the PSAP. By the same token, while a requirement that *all* terminal adapters “be capable of providing location information automatically” by a date certain<sup>11</sup> is not warranted for any VoIP service at this time, the associated burden would be especially unnecessary in the case of fixed services. Such a rule would needlessly impose significant downstream costs on providers and consumers of fixed VoIP services, for which such capabilities would be superfluous. Moreover, with well over 600,000 terminal adapters already deployed to Time Warner Cable

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<sup>11</sup> *NPRM* at ¶ 57.

subscribers, it would be a significant and unwarranted burden for the Commission to adopt any rule that would require these modems to be replaced. In short, just as the Commission established unique GPS-based E911 solutions for CMRS services and refrained from imposing such technical mandates on providers of local exchange services,<sup>12</sup> it need not concern itself with changes of location for users of fixed services.

Nor should the Commission adopt undifferentiated requirements regarding nomadic and mobile VoIP services. Rather, the Commission should continue to make legitimate consumer expectations the touchstone for establishing regulatory obligations in this arena.<sup>13</sup> Because consumers expect E911 access when using services such as Digital Phone and TotalTalk, Time Warner Cable and AOL have offered E911 capabilities from the outset and have supported an E911 mandate for all comparable services.<sup>14</sup> Yet, while consumers reasonably expect to have access to E911 when using services that are the functional equivalent of traditional wireline voice services, they do not have such expectations with respect to many non-traditional voice services. The Commission recognized as much in exempting peer-to-peer VoIP services from regulation,<sup>15</sup> and again in stating that its new E911 rules do not apply to providers of “instant messaging or

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<sup>12</sup> See *Implementation of the 911 Act; The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105, Fifth Report and Order, WT Docket No. 00-100, First Report and Order and Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 22264 (2001); *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Report and Order, CC Docket No. 94-102, 9 FCC Rcd 6170 (1994).

<sup>13</sup> *VoIP E911 Order* at ¶ 23.

<sup>14</sup> See *Time Warner Comments* at 8.

<sup>15</sup> See *Petition for Declaratory Ruling That Pulver.com’s Free World Dialup Is neither Telecommunications Nor a Telecommunications Service*, Memorandum Opinion and Order, WC Docket No. 03-45, 19 FCC Rcd 3307 (2004).

Internet gaming.”<sup>16</sup> Going forward, if the Commission chooses to adopt new requirements for nomadic or mobile VoIP services that closely resemble and compete with traditional telephone services,<sup>17</sup> it should continue to refrain from regulating those VoIP services whose functional distinctions engender more limited customer expectations. In particular, soft-phone services that are clearly ancillary to instant-messaging services, and do not create an expectation on the part of the consumer that they have E911 calling capabilities, should remain free from regulatory mandates.

As for nomadic or mobile services that do resemble traditional voice services, the Commission should continue its posture of vigilant oversight rather than adopting specific technical mandates. In cooperation with a broad array of industry participants and in close consultation with the Commission, NENA has spearheaded a consensus-driven process aimed at implementing new means of automatically identifying customer location.<sup>18</sup> It would be premature for the Commission to bless a particular technological approach, whether it be an access jack inventory, a wireless access point inventory, access point mapping and triangulation, HDTV signal triangulation, a GPS solution, or some other approach.<sup>19</sup> The NENA process, aided by market forces and technological developments, is best suited to yield a workable solution that advances the Commission’s interest in promoting public safety. Nor should the Commission attempt to avoid picking specific technologies by instead selecting artificial and arbitrary deadlines regardless of

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<sup>16</sup> *VoIP E911 Order* at ¶ 24 n.78.

<sup>17</sup> *See NPRM* ¶¶ 57-58

<sup>18</sup> *See, e.g.,* Press Release, *NENA and VON Coalition Host VoIP E9-1-1 Solution Summit* (July 8, 2005) (available at [www.nena.org/VoIP\\_IP](http://www.nena.org/VoIP_IP)).

<sup>19</sup> *NPRM* ¶ 57.

the technology used. Imposing any mandates — whether technical or time based — without due regard for technical feasibility and other constraints risks diverting resources and setting back progress toward an effective next-generation E911 system.

## **II. The Commission Should Not Adopt Performance Standards or Additional Requirements Concerning Customer Notifications or Acknowledgements.**

When the Commission adopted its E911 rules for interconnected VoIP services, it fully safeguarded the interests of consumers that use such services. There is no need for the Commission to impose further regulations in the interest of ensuring compliance with existing obligations. To the contrary, imposing performance standards or additional requirements concerning customer notifications or acknowledgements would tilt the balance toward overregulation and risk undermining the public interest goals the Commission seeks to promote.

Before the Commission contemplates performance mandates, it should give service providers a reasonable opportunity to develop appropriate processes and systems capable of immediate user location updates. There is no basis at this early stage to presume that performance will be inadequate; to the contrary, the Commission has stated its clear expectations and industry participants are directing significant resources toward ensuring that they can comply. In addition to the efforts of Time Warner Cable and AOL, many other VoIP providers are also actively working to advance this cause.<sup>20</sup> Moreover, the market dynamics surrounding E911 provisioning make the potential

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<sup>20</sup> On August 10, 2005, more than 100 Subscriber Notification and Acknowledgement status reports were filed with the Commission by VoIP providers detailing efforts made to provide subscribers with notice of their services' E911 capabilities. *See* WC Docket No. 05-196.

imposition of performance standards especially problematic. Time Warner Cable and AOL, like most providers of VoIP services, rely on third parties to provision 911 trunks, selective router access, and other necessary service components. If the Commission were to impose performance standards that fail to take account of various real-world impediments to implementation, such vendors likely would curtail their E911 offerings, which in turn would leave consumers with fewer E911-compliant communications options. The need to preserve a functioning marketplace for E911 access is particularly important in light of the Commission's decision to refrain from imposing any obligation on incumbent LECs to provision such service to VoIP providers on a common carrier basis. In that respect, the Commission should continue to monitor the ILECs' conduct and to enforce or clarify the ILECs' obligations under Title II if this proves necessary.

The Commission also should refrain from imposing additional or more restrictive customer notification or acknowledgement requirements.<sup>21</sup> The Commission's existing rules are more than adequate to ensure that consumers will be clearly informed about their ability to access E911 using an interconnected VoIP service and any limitations that may exist. Moreover, the recently established FCC-NARUC VoIP E911 task force has been charged with "developing educational materials to ensure that consumers understand their rights and the requirements of the FCC's VoIP E911 Order."<sup>22</sup> This undertaking will further increase public awareness, including among consumers who do not currently subscribe to a VoIP service. No further notification or acknowledgement requirements are necessary to ensure fulfillment of the Commission's goals.

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<sup>21</sup> *NPRM* ¶ 59.

<sup>22</sup> Press Release, *FCC Announces Joint Federal-State VOIP Enhanced 911 Enforcement Task Force* (rel. July 25, 2005).

For similar reasons, the Commission should reject proposals to adopt any additional reporting requirements concerning VoIP providers' progress in complying with the Commission's rules.<sup>23</sup> The *VoIP E911 Order* already requires providers of interconnected VoIP services to offer E911 access to all subscribers, and providers are obligated to certify their compliance. These clear legal duties make further reporting requirements unnecessary. If the Commission's primary interest going forward is to keep abreast of technical developments regarding automatic location identification, it can use the NENA process that is already in place, together with the FCC-NARUC E911 task force, to obtain any required information. Service providers are eager to work collaboratively with the Commission and answer any inquiries staff may have. While further reporting requirements are unnecessary for any VoIP providers, at a minimum it would be appropriate to exempt providers of fixed VoIP services from any new requirements targeted at nomadic or mobile VoIP services. As noted above, imposing requirements uniformly, without regard for the nature of the service, risks creating regulatory burdens unnecessarily.

Moreover, the Commission should be circumspect about proposals to establish mandates regarding customer privacy at this time.<sup>24</sup> Time Warner Cable and AOL afford their VoIP customers significant privacy protections; indeed, both companies comply with the CPNI provisions set forth in Section 222 of the Communications Act. The Commission should not adopt new mandates in the absence of any indication of market failure. It would be particularly premature to impose new requirements before the

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<sup>23</sup> *NPRM* ¶ 60.

<sup>24</sup> *NPRM* ¶ 62.

Commission has resolved the statutory classification issues surrounding VoIP services. because the resolution of those issues could render the question moot for some services (since Section 222 would apply automatically to any services deemed to be telecommunications services). To the extent that the Commission conclusively classifies some VoIP services as information services, and Congress has not determined the regulatory framework for such services in the interim, the Commission can then examine whether there is a need to adopt additional privacy protections under Title I of the Act.<sup>25</sup>

Finally, with regard to the role of state and local government,<sup>26</sup> Time Warner commends the Commission for establishing the joint FCC-NARUC task force and believes that this entity will appropriately involve state and local officials in consumer education, implementation of the Commission's rules, and oversight.

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<sup>25</sup> If the Commission classifies interconnected VoIP service as an information service, it should make clear that service providers are authorized to transmit subscribers' location information to any transiting providers and to PSAPs without violating any privacy protections.

<sup>26</sup> *NPRM* ¶ 61.

## CONCLUSION

For the foregoing reasons, the Commission should not only recognize that there are important distinctions between fixed and nomadic VoIP services, but should refrain from imposing on either type of VoIP service additional requirements relating to location updates, customer notifications and acknowledgements, compliance reports, or customer privacy.

Respectfully submitted,



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